

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1150 OF 2004 (S/S)

Prashant Bahuguna S/o Sri Ramesh Chand Bahuguna,
R/o Vikas Nagar, P.O. Haribartpur, Distt. Dehradun,
Uttaranchal

..... Petitioner

Versus

1. State of Uttaranchal through Home Secretary, Dehradun
2. Superintendent of Police, Uttarkashi
3. Inspector General of Police, Garhwal Region, Uttaranchal,
Dehradun
4. Additional Director General of Police, Crime/ Law
Maintaining, Police Headquarter, Uttaranchal, Dehradun

..... Respondents

Dated: 19.11.2005

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari for quashing the dismissal order dated 22.05.2004 (Annexure No.1) passed by Respondent No.2 and also to set aside the order of Respondent No.3 dated 25.06.2004 (Annexure No.3) and order of Respondent No.4 dated 11.08.2004 (Annexure No.5).

The services of the petitioner have been terminated vide order dated 22.05.2004 which was issued by Superintendent of Police, Uttarkashi. The translated version of this order is being reproduced hereunder which will make it clear that the authority concerned has not given any reason as to why holding the departmental enquiry was not practicable. The only reason that no evidence can be held, this cannot be a reason not to hold the enquiry.

“As per definition of appointing authority defined under rule-3 (a) of the order-2002 of Uttar Pradesh Police Officers of the Subordinate Ranks Punishment and Appeal Rules,

1991, the undersigned is the appointing authority of constable no. 122, Prashant Bahuguna. So he is competent to punish under section 8 of this Rule.

From the perusal of the information/comments placed before me against constable no. 122, I have come to the conclusion that the information/facts are available against constable no. 122 Prashant Bahuguna, on the basis of which I am satisfied that the initiation of proper enquiry against constable no. 122 Prashant Bahuguna is not practicable because he being a disciplined police personnel, during his duty in the night of 21/22.04.2004 in Ardh-Kumbh Mela in the area of Khadkhadi, Bheemgoda and Har Ki Pauri, committed indiscipline, mis-behaved with the public and committed damages to the properties. He also provoked and instigated to his colleagues to do the above acts and also lowered the dignity of the Police Department. He also disobeyed of the higher police officers. No other evidence could be collected against this Constable. The act done by this constable is not pardonable and it is not proper to retain his police constable in the disciplined force to maintain discipline.

Therefore, I in exercise of powers under section 8 (2) (Kha) of the above Rules read with Article 311 (2) (b) of the Constitution of India, dismissed constable no. 122 Prashant Bahuguna from the services from the date of receipt of this order. This order will be implemented with immediate effect.

Letter No. Sa-3/04
Dated: May 22, 04”

From the perusal of the aforesaid order, it is clear that the satisfaction of the appointing authority that the enquiry was not reasonably practicable is based on no material. The only reason stated in the order is that no evidence could be collected. This reason is not sufficient to be satisfied affidavit also, no reason has been stated. Whatsoever has been stated in the impugned order has just been reiterated in the counter affidavit. Therefore, the order-dated 22.05.2004, which is impugned in the writ petition, cannot be sustained in the eye of law as laid down by the Apex Court in the case of **“Union of India and another Vs. Tulsirma Patel (1985) 3 Supreme Court Cases, 398”**.

Hence, the impugned order dated 22.05.2004 is liable to be set aside. Therefore, the writ of certiorari is issued and the order-dated 22.05.2004 is hereby quashed. The petitioner is reinstated in the services. However, it is open for the respondents to take disciplinary action against the petitioner as per law for the alleged misconduct mentioned.

The writ petition is allowed accordingly. No order as to costs.

(P.C. Verma, J.)

Rajeev Dang